

DWR Response to Comments

	Category	Comment	Response
1	Funding	Footnote should reference section XVI. How do local agencies initiate a direct expenditure project? Is this included under the PSPs? Or is DWR the only entity to propose?	The footnote has been corrected. Regarding direct expenditures, LMA's should contact the Department, which will consider proposals on a case by case basis.
2	General	Statements like; "The State has invested over \$200 million in flood control and Habitat Projects carried out by Local Agencies in the Delta. This includes funds that have been provided to Local Agencies through the subventions and Special Projects program. Department of Water Resources ('Department' or 'DWR') funding has been dedicated to maintaining and improving the aging Delta levees."; can be misleading the legislature and DWR management to think they have invested \$200 mil. across all RDs. This and all other references that include this statement need to state how much was spent on 8 western islands, the admin of the program and how much spent on the balance of the RD's.	While the Local Agencies may consider this information misleading with regard to the Special Projects Program, the information provided is correct.
3	Aqueduct	Does "Delta Aqueduct" refer to current aqueducts or potential future locations? (or both)	The portions of the Guidelines concerning "Delta Aqueduct" refer to existing municipal and industrial water supply aqueducts.
4	General	"protecting statewide interests through raising <i>most</i> delta levees to HMP" should read All. What is the basis for this, what is the selection criteria, what district will not be funded? If you are limiting the program, there must be some pre determined decisions that DWR is not making us aware of. You cannot limit and not tell us who is not eligible.	The Guidelines have been modified to address this comment in the Introduction, Section III, No-Regrets Projects, Section XIII, Project Eligibility Requirements (Table 1), and Section XIV, Project Selection Criteria (Table 2).
5	General	Inconsistencies between the requirements for the 5-year plan in Exhibit A and the information from the 5-year plan needed to complete the Local Agency Benefit Assessment in Exhibit B.	Exhibit C has been modified to indicate this information is in addition to the requirements of the 5-year plan.
6	Funding	Justification of the statement "In the Special Projects Program, real estate costs are generally the responsibility of the Local Agency." The initial SB34 legislation described the acquisition of easements up to 400-feet in width to control subsidence near the levee. Please provide the regulations that established this requirement. Also, address Water Code Section 12314(b) statement that project plans may include "conveyance of interests in land to limit or to modify land management practices which have a negative impact on flood control facilities".	It is the general policy of this program to fund flood control. We believe that this is substantiated historically, legally and legislatively. Real estate costs may be credited to the Local Agency cost share upon approval by the State.

DWR Response to Comments

	Category	Comment	Response
7	LABA	<p>"Local Agency Benefits Assessment (LABA): Is the benefits assessment a Local Agency may perform or have performed to derive an Alternative State Cost Share based on the benefits the proposed Project will provide to the Local Agency, separate from the benefits that the Project offers statewide or to other nearby beneficiaries."</p> <p>It has already been proven through various studies that Agricultural Districts have a difficult time funding even minor portions of major projects. The additional expense of a costly analysis for Ag based districts is unnecessary.</p>	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3).
8	Cost-Share	Further clarification of eligible non-construction costs.	The Guidelines have been modified to address this comment in Section VII, Eligible Costs, and Section XV, Cost-Share Formula.
9	General	"Repair or improve <i>critical sections</i> of levees". Need definition of critical section...critical sections of what, what constitutes critical? How do we know if we meet the criteria without clear definition.	The Guidelines have been modified to address this comment in Section III, No-Regrets Projects.
10	General	Define areas of "future habitat restoration opportunities", "no-regrets projects", and location of "stranded investments"	<p>Future restoration opportunities simply refers to opportunities to restore habitat in the Delta that may become available in the future.</p> <p>No-regrets projects are discussed in Section III of the Guidelines.</p> <p>Stranded Investments is defined in Sections II and III of the Guidelines.</p>
11	General	<p>"Field Investigations, including electromagnetic survey, <i>geodetic</i> survey, or other testing research needed to formulate the Scope of Work" should probably be geotechnical...look up definition of geodetic...should probably state land surveys instead.</p> <p>Electromagnetic surveys have not proven to provide reliable data in most cases, and probably won't be used for designed improvement projects.</p> <p>Need to add geotechnical investigations as this is where the focus on stability occurs.</p>	The Guidelines have been modified to indicate the use of topographic surveys, in lieu of geodetic surveys.
12	Habitat	Define "Special Projects Program's habitat enhancement priorities".	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula.
13	Funding	The "Available Funding" section is confusing, and appears to conflict with other sections discussing funding (i.e.. Top of page 2)	The Guidelines have been modified to address this comment in Section I, Introduction, and Section IV, Available Funding.

DWR Response to Comments

	Category	Comment	Response
14	Cost-Share	<p>"Ineligible Projects include projects which do not meet eligibility requirements and those directly related to work on agricultural, water supply and waste disposal facilities. Such Projects generally do not meet the primary purpose of the Special Projects and the intent of California Water Code Section 12311: 'the [flood] protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and fish and wildlife habitats, and other public benefits.'"</p> <p>This is poorly written. It should clearly state the rationale and allow flexibility. If a levee project impacts an ag irrigation system, then the program should pay for the moving of the system. It should not however pay for a non flood control related ag related facility. (i.e., new irrigation control structure that is not being impacted by a flood control project. What about relocation of fences, siphons and pipes in the levee due to impacts from an eligible project?...needs further clarification.</p> <p>There needs to be clarification that these types of works are eligible if impacted by an eligible project.</p>	<p>Costs associated with impacts to levee project works within the footprint of a project are outlined in the Guidelines, and will be handled on a case by case basis. Any related costs may be covered at the Department's discretion.</p>
15	Cost-Share	<p>"Costs of planning and implementing (including operations and monitoring during the planting period) habitat mitigation and enhancement associated with the project". What about long-term monitoring and maintenance during plant establishment that may be required as part of a project permit from the environmental agencies? Those costs should be eligible and further should be part of the permitting process.</p>	<p>The Department understands there may be some needs to support habitat maintenance efforts, and will address these on a case by case basis.</p>
16	Cost-Share	<p>"For construction Projects, the State will only pay its State share of Non-Construction Costs up to 30% of the total Project cost."</p> <p>does this include permitting and geotechnical costs? If it does, it could be more than 30% if the project is small in cost. Permit costs can be extremely high when working in or near water or wetlands. Geotechnical studies can also be very expensive, particularly when coupled with design, survey, bidding, project management, inspection, and admin costs associated with claim and heavy documentation requirements of the program.</p>	<p>The Guidelines have been modified to address this comment in Section VII, Eligible Costs, and Section XV, Cost Share Formula.</p>
17	General	<p>Suggest "repair of pumping stations" (pg. 9) be removed from ineligible projects to ensure such repair does not become an emergency expenditure in the event of flooding. This lesson from Hurricane Katrina could be applied to the Delta.</p>	<p>See response in Row 14.</p>
18	Cost-Share	<p>(Footnote) Non-construction costs conflict with section XV (20% vs. 30%).</p>	<p>The Guidelines have been modified to address this comment in Section VII, Eligible Costs, and Section XV, Cost Share Formula.</p>

DWR Response to Comments

	Category	Comment	Response
19	Cost-Share	Discrepancies between the alternative cost share and District reimbursement. The apparent intent of the guidelines is to limit the amount of money DWR will spend on non-construction costs over a certain percentage of the overall project costs. But the guidelines state DWR will only pay its share of non-construction costs up to 30% of the total. On page 23, the guidelines state DWR will not pay its share of non-construction costs over 20% of the total. This should be clarified. Also revise the example in Exhibit B to clarify what appears to be a disincentive to have a project that has equal flood damage benefits and present value costs.	The Guidelines have been modified to address this comment in Section VII, Eligible Costs, and Section XV, Cost Share Formula.
20	Funding	Reiteration of the statement "Special Projects real estate costs are generally the responsibility of the Local Agency." This does not seem to be substantiated historically, legally or legislatively. Does this get credited to the Local Agency cost-share?	It is the general policy of this program to fund flood control projects. We believe that the statement that "Special Projects real estate costs are generally the responsibility of the Local Agency" is substantiated historically, legally and legislatively.
21	Cost-Share	Ineligible costs, 1st bullet: It appears that once a level of protection has been achieved, the rehabilitated levee is not eligible for special projects funding in the future. Because of the foundation conditions of levees in the delta, and the necessity for multiple stages of construction, this could be problematic.	Subventions covers maintenance of existing levees. The Special Projects Program covers the costs to improve the level of protection of a levee to HMP or PL 84-99 standards.
22	Cost-Share	Eligible Costs: clarify "a proportionate share of reasonable overhead costs".	The Guidelines have been modified to address this comment in Section VII, Eligible Costs.
23	Cost-Share	"A proportionate share of reasonable overhead costs". What does this mean, and how will DWR interpret this?	The Guidelines have been modified to address this comment in Section VII, Eligible Costs.
24	Cost-Share	"Costs that are not eligible may include, <i>but are not limited to</i> , the following". We need to know in advance specifically what is not eligible. This is like a reverse blank check where almost anything can be denied, without reason.	See response in Row 14.
25	Funding	Provide information about funding available to "maintain HMP level of protection once it has been achieved through a Project funded under the Special Projects program" (pg 10) to ensure investments are not lost by foundation settling and general attrition.	Subventions covers maintenance of existing levees. The Special Projects Program covers the costs to improve the level of protection of a levee to HMP or PL 84-99 standards.

DWR Response to Comments

	Category	Comment	Response
26	General	<p>"Operation, maintenance, repair, replacement, and rehabilitation costs of the completed levee works, including the cost to maintain the HMP level of protection once it has been achieved through a Project funded under the Special Projects program"</p> <p>There should be no limitations on future HMP work. The way the current MOU is written, if new 100 year flood elevations are established, then all districts could fall below HMP. The same is true with survey datum shifts, earthquakes, unstabilized foundations, subsidence can cause the levee to drop below the HMP elevation. If ineligible, and levees are not maintained at HMP, the Federal Govt. will deny disaster assistance.</p>	Subventions covers maintenance of existing levees. The Special Projects Program covers the costs to improve the level of protection of a levee to HMP or PL 84-99 standards.
27	Editing	Footnote 3 (pg 12) typo: "Also, typical FloodSAFE require an economic justification;" add "projects" after "FloodSAFE"?	The Guidelines have been modified to address this comment in Section XI, Required Application Materials.
28	Habitat	Several areas of the guidelines indicate Water Code Section 12314 requires "no net loss of habitat" when it actually requires "no net long-term loss of habitat". This is a critical feature and very different from CEQA that addresses "significant" impacts. An impact could be long-term and require mitigation under Section 12314, but not be considered significant impact and addressed differently.	The Guidelines have been modified to address this comment in Section I, Introduction, Section XI, Required Application Materials, Section XIII, Project Eligibility Requirements, Section XIV, Project Selection Criteria, and Section XV, Cost Share Formula.
29	General	"The Department may contact Proponents of proposals that are substantially complete but missing some items." This statement may lead to DWR arbitrarily assisting some Local Agencies and not others.	As part of the competitive grant process, all project submittals will be processed equally.
30	General	Will Project Agreements specify the funding source so the local agent knows whether a Labor Compliance Program is required?	This will be specified in the Project Funding Agreements.
31	General	<p>"A statement of loans from other sources or bonds that are associated with the Financial Plan and a statement of repayment method and loan security for such other financing sources".</p> <p>This should be removed at this level of the process. Maybe it would be appropriate if the project was approved, but in the application process this information cannot be accurately determined as no bank will lend, or provide a firm rate until the project is accepted. A general concept and a range of possible rates and fees might have to suffice.</p>	The Guidelines have been modified to address this comment in Section XI, Required Application Materials.
32	HMP	<p>"A design upgrade (overbuild) may be proposed in a HMP project to add up to 0.5 foot of extra crest elevation. An additional 0.5 foot may be added if the levee crest includes a state or county paved road."</p> <p>Need some allowance for sites with geotechnical or other issues, like pipeline clearance issues.</p>	The Guidelines have been modified to address this comment in Section XIII, Project Eligibility Criteria.

DWR Response to Comments

	Category	Comment	Response
33	HMP	"The State's goal is to <i>raise nearly all</i> Delta Levees to HMP for the following reasons." "nearly all"...Who is to be left out of this minimum standard? Why, and isn't it required in the MOU with FEMA for all districts?	The Guidelines have been modified to address this comment in Section XIII, Project Eligibility Criteria.
34	General	"If a Local Agency is contacted by the Department with a request for more materials, it will have one week to provide all requested information." There may be a need to provide some wiggle room on this requirement.	Time constraints associated with proposal review and evaluation prohibit an extended time period to complete the proposals. Adding extra time will hold up all applicants. The one-week limit must remain.
35	General	"Under these Guidelines, applications will be solicited for work that improves Delta levees to HMP or Delta specific PL 84-99 standards" Assume Exhibit C ?	See Exhibit B.
36	General	Item 5: what kind of growth? Suggest inserting population, land use change or another definition.	The Guidelines have been modified to address this comment in Section XIII, Project Eligibility Criteria.
37	General	Where and when applicable, Department must approve of the level of protection the Local Agency seeks to achieve through build-out of its Five-Year Plan. What does this mean?	The Guidelines have been modified to address this comment in Section IX, Five-Year Plans. The Department will require Local Agencies to submit a draft plan for review and comment.
38	General	Item 4: Indicates projects must account for climate change and "include features that allow accommodation or adaptation to future moderate changes." This conflicts with the item on page 15 that limits overbuild.	The Guidelines have been modified to address this comment in Section XI, Required Application Materials, and Section XIII, Project Eligibility Criteria (Table 1).
39	General	A design upgrade (overbuild) may be proposed in an HMP project to add up to 0.5 feet of extra crest elevation, if the crest includes a state of county paved road. There are a number of factors that go into the design overbuild, if required. To limit it as stated above may require additional work very soon after completion of a project in order to maintain HMP. Also, this conflicts with climate change requirements (noted above). In the area of county roads, this should include extra width to meet county road requirements.	The Guidelines have been modified to address this comment in Section XIII, Project Eligibility Criteria (Table 1).
40	Funding	If there are data available to determine the lifespan of a crest elevation meeting the HMP standard, and the data suggests rapid settlement in certain locations causes an Agency to become out of compliance (say within the duration of the funding sources), consider the benefits of <i>mandating</i> the "0.5 foot of extra crest elevation" (pg 15).	This is an engineering decision, and should be addressed by professionals that know the levee system they work on.
41	Habitat	"Habitat Project Requirements:" In the specific requirements section, it is unclear whether a project must meet all 3. These will make it hard for projects to qualify under Water Code Section 12314 in regard to mitigation and enhancement requirements for individual reclamation districts.	The three criteria are distinct. The Guidelines have been modified to address this comment.

DWR Response to Comments

	Category	Comment	Response
42	Habitat	50 acre minimum will make it difficult for channel margin habitat projects to qualify.	This 50 acre minimum only referred to the establishment of a mitigation bank; and does not reflect an acreage requirement for multi-benefit (levee and habitat) and habitat enhancement projects. The Guidelines have been modified to address this comment.
43	Ranking	Selection Criteria/Ranking: will the ranking be based on discrete metrics or will it be subjective? Methodology should be provided.	Ranking criteria will be provided in the Projects Solicitation Packages (PSP).
44	Ranking	"Project must be for work to reinforce levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta which are vulnerable to flood damage." Is there a list of these levees?	There is no list. It is up to the LMA to justify receipt of funding for their project.
45	Ranking	"If the amount of money available for HMP Projects is insufficient to fund qualified HMP proposals, the Department will rank proposals based on the size of geographic area to be protected by the proposed Project, the extent to which the Project protects life and safety and the likelihood that the Project will be completed in the current construction season." It does not appear that this is always the best criteria to rank projects. Additional explanation is requested.	The Department believes the criteria are adequate for this set of Guidelines. Additional considerations will be entertained for future revisions.
46	Ranking	Habitat Impacts and Mitigation: There are many extremely vague references to proposal evaluations (i.e. "how well it meets" and "will be less favored." Please provide ranking methodology.	The Guidelines have been modified to address this point in Section XIV, Project Selection Criteria (Table 2). Additional detail will be provided in PSPs to describe the ranking process.
47	General	Aqueduct Project Selection Criteria: How was the proximity determined (1000 ft)? Suggest using a nexus approach rather than an apparently arbitrary cutoff.	Based on a technical report (supporting document for DRMS). Nexus approach will require more in depth analysis be submitted by the Local Agencies in order to conduct a case by case analysis.
48	Ranking	"Priority may also be given to Local Agencies that have demonstrated evidence of communicating Project intentions to DFG." This is open ended; someone could have a terrible project, but they "may" be given priority anyway because they discussed intentions with DFG.	This is only one criteria that is considered. It will not be the only item used to select a project.
49	Habitat	"Priority shall be given to projects that meet the eligibility criteria listed in Chart 1 at a high magnitude and provide habitat for Delta smelt and other native fish species consistent with SB 2X1." What is the established criteria for this? We need to have clear guidance as to what constitutes the correct and beneficial habitat for smelt, and where it should be located within the delta. Has this been truly established?	Additional detail regarding habitat criteria will be provided in individual PSPs.
50	PL 84-99	The base cost share of 50% for PL 84-99 projects will limit the amount of work that a district can perform to basically what they have been providing through the subventions program. This is not a considerable amount and would make the application for special projects an expensive investment with little or no benefit.	Cost Share Enhancements are available beyond the 50% base cost share.

DWR Response to Comments

	Category	Comment	Response
51	PL 84-99	<p>"If the State or Local Agency identifies specific, discrete third-party beneficiary to the Project (such as a utility company whose transmission or gas lines will experience increased flood protection as a result of the project) and that third-party beneficiary refuses to contribute its fair share to funding the Project, the State reserves the right not to raise its share above this base level or otherwise restrain or withdraw its support for the Project."</p> <p>Beneficiaries of District facilities are already being assessed pursuant to prop 218. They cannot be double taxed. Perhaps DWR should better understand how prop 218 governs how assessments to beneficiaries are prepared. This exercise could also suffice to cover questions raised relative to LABA.</p>	<p>The guidelines, under project cost sharing, refer to a Reclamation District's ability to pay and to cost share. This does not conflict with Proposition 218 which addresses the Reclamation District's ability to tax and/or charge property owners. The Program is not imposing a tax or charge on individual property owners in the Delta. Water Code Section 12312 specifically addresses this comment, stating that "...the department shall seek a sharing of costs with the beneficiaries or owners or operators of public facilities benefitted by the flood protection projects".</p>
52	Cost-Share	<p>On Page 23 the last sentence in the 1st paragraph states that "The State will not pay its share of Non-construction costs over 20% of the overall cost". Are the costs of obtaining permits and implementing mitigation considered "non-construction costs? If yes, the 20% value is considerably low.</p>	<p>The Guidelines have been modified to address this comment in Section XV, Cost Share Formula. The 20% limitation will apply to pre-construction engineering costs.</p>
53	LABA	<p>The results of the LABA are not a fair or accurate representation of the State's fair share of the cost.</p>	<p>The LABA results will provide a basis for identifying the Local Agency's costs. The remaining costs may be assumed by the State. Enhancements can further increase the State Cost-Share.</p>
54	Cost-Share	<p>Under project cost sharing, the State has the right to limit its cost share if it determines that a third party beneficiary is not paying its fair share for flood control benefits. However, this DWR "opinion" may conflict with the Water Code and other provisions described by Prop 218, which define how districts can assess and assign benefits.</p>	<p>See response to question on Line 51.</p>
55	Cost-Share	<p>Guidelines propose a minimum of 90% and a max of 95% for HMP work. Recommend 100% for agricultural areas. The work should be done ASAP.</p>	<p>The Department considers cost-sharing to be an important principle, and therefore requires a local cost contribution for all projects.</p>
56	Cost-Share	<p>Believe standard for protection should be PL 84-99. Guidelines propose a state share of 50%. Recommend 90% for levee systems which do not encompass urban development or areas specifically planned for urban development. The base level of protection for these areas should not require the same complex analysis which would be required to get the state cost share high enough to accomplish the work. Believe the analysis will add an unnecessary expense.</p>	<p>The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3).</p>
57	LABA	<p>The cost to prepare a LABA in accordance with the guidelines is likely in excess of the cost to prepare the 5 year plans.</p>	<p>Comment noted.</p>

DWR Response to Comments

	Category	Comment	Response
58	Cost-Share	The maximum alternative cost share expressed on page 24 of the guidelines is 90%. The EXHIBIT B: LABA states a maximum of 75%. Which is correct?	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3), and Exhibit C, Local Agency Benefits Assessment (formerly Exhibit B).
59	General	Suggest an appeal process to address the inevitable disagreements that will develop regarding cost shares and evaluations	The Special Projects Program is a grant program. There is no appeal process for the evaluation process. Cost shares will be determined solely upon project submittals.
60	Cost-Share	"Alternative State Share" and footnote 8 seem to indicate that the max state share under the LABA is 90% where other sections describe the maximum is capped at 75%.	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3), and Exhibit C, Local Agency Benefits Assessment (formerly Exhibit B).
61	General	Appears to be a repeat of sections.	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3).
62	General	The projects are limited to HMP or PL 84-99. Both of these are proscriptive cross-sections and do not address basic levee safety consideration (seepage, seismic, wave action). The main concerns with delta levees are seepage and earthquakes. The standards give equal weight to existing levees without regard to any factors of concern (i.e.. type of fill material, liquefaction potential, wind fetch). These standards could eliminate the thought and engineering that is needed to make meaningful improvements in the safety of the existing levees. We encourage DWR to allow projects backed by sound engineering, that provide for increased protection from the concerns not provided for in these standards.	Local Agencies and the Department rely on professional engineers to incorporate appropriate loading conditions in their design. The standards cited are to qualify the Local Agency for federal emergency response funds. Engineers control the design of Delta Levees.
63	General	The Local Agency Benefit Assessment is based on completion of the 5-year plans. The 5-year plans will not be completed in time to perform the benefit assessments and submit applications for this fiscal year.	LABA is an optional study, and may be completed on the Local Agency's schedule. Portions of the 5-year plan required for the LABA may be expedited.
64	General	The overbuild limit is 6 inches. Overbuild is necessary in many areas to accommodate future settlement. Levees have settled in excess of 6 inches in 3-5 years. We believe the overbuild should be based on maintaining HMP or PL 84-99 for a set time frame (20 years?) rather than a set maximum overbuild.	The Guidelines have been modified to address this comment in Section XIII, Project Eligibility Criteria (Table 1).
65	Cost-Share	The indicated maximum for a PL 84-99 project is 85% for conventional construction. The plan states a 95% maximum, but it is not clear how this can be achieved. Possibly statewide interest? Clarify	The Guidelines have been modified to address this comment in Section XV, Cost Share Formula (Table 3).

DWR Response to Comments

	Category	Comment	Response
66	Cost-Share	The State Cost Share decreases as flood protection benefits increase. This is opposite of what is expected for the State's involvement in increasing flood protection for the delta levees. We believe the DWR delta levee program's main intent is to reduce flood risk in the delta, so the cost share should increase as the flood benefits increase. A program that rewards projects with less flood benefit does not make sense to protect the State's interests in the delta.	The goal of the Department is to assist Delta Local Agencies to raise their levees to at least the HMP standard. Levees constructed at or above the HMP standard may qualify for federal disaster assistance. Raising the Delta levees to the Delta Specific PL 84-99 standard is a long term goal of the Department and will require more funding over the next few years. The Near-Term Guidelines is only for the works to be funded through FY 2010-2011.
67	LABA	The fact the only properties that are on the assessment role be included in the LABA for the district eliminates all of the statewide interests that are protected by the districts levee's (aqueducts, railroads, highways, county roads and water quality).	The statewide interests are the justification for the State contributing funds to levee maintenance and improvement.
68	LABA	The tools for estimating flood Damage Reduction benefits are: The USACE NED flood reduction manual, The US Water resources Council's Principles and Guidelines as well as the DWR's Economic Analysis guidelines: Flood Risk management. These documents are extensive and likely filled with discrepancies.	Comment noted.
69	LABA	The LABA is to use The Delta Risk Management Strategy (DRMS) for data and models. The DRMS is an opinioned document that relies on theoretical data which is often not accurate (i.e. the probability of "sunny day failure" is 1-in-1000 yrs??). It is so cumbersome that it would require 3 days just too physically read the text.	Where data other than DRMS is used, provide an appropriate justification to establish data credibility.
70	LABA	The time frame for preparation of a LABA is far in excess of the time allocated to prepare an application for Special Projects Funding.	If the LMA chooses to perform a LABA, the LABA must be completed before the final claim for the funding agreement is submitted.
71	Funding	Please provide the DWR's budgeted amount for each of the categories specified (HMP, PL 84-99, Habitat and Delta Aqueducts).	The Special Projects Program has been allocated approximately \$200 million under Senate Bill X2 1. However, we are not able to specify the exact dollar amount for each category until there is a better understanding of the actual cash flow to the program.
72	Funding	Project size changed from \$2 million to \$5 million. Please explain given both versions of guidelines rationalize the cost "to achieve economies of scale yet maintain the ability to complete the Project in one construction season." Given the improved emphasis on bringing Delta levees to HMP Standard, how does the cost increase impact implementation? What is the average per-mile cost of raising a Delta levee 0.5 feet? Delta-wide what is the approximate length of levees below the HMP Standard? Recognizing the lengths of Delta levees vary, generally, would \$2 million suffice to bring a Local Agency into HMP Standard compliance, or would it take \$5 million?	Funding agreements are typically longer than one construction season. It is estimated that there are about 100 miles of Delta levees below HMP standard. The cost of upgrading levees is project specific.

DWR Response to Comments

	Category	Comment	Response
73	Ranking	What are the relative rankings of the criteria within each category (HMP, PL 84-99, Delta Aqueduct, Habitat)? What provision allows for a poor distribution of application across the categories? For example, if most of the applications were submitted for "Delta Aqueduct" and one-each for the other categories, how will the goal to reach the HMP Standard be met? Would each of the other projects get funded because there was a lack of competing projects? Given the length of time for the application procedure and the short window of time for construction, what considerations have been made to ensure immediate delays of at least one year will be avoided?	This will be addressed in the Projects Solicitation Packages.
74	Ranking	Who in the Department (positions, not names) reviews and scores these projects? To improve transparency, might the Department consider an independent review panel?	The review, evaluation, and selection of project proposals will be completed by Program staff and approved by Department management and executive.
75	Ranking	There appears to be a lack of details for the scoring rationale of "category-specific (i.e. HMP, PL 84-99, Habitat, etc.) eligibility requirements, ranking systems..." for project selection, reducing transparency.	This will be addressed in the Projects Solicitation Packages.
76	General	The LABA requires the 5 yr plan to be complete although the Districts have until June to provide the plan. Are the districts required to complete this plan prior to the application? What is the DWR's 5 yr plan for funding for the islands?	If the LMA chooses to perform a LABA, the LABA must be completed before the final claim for the funding agreement is submitted.
77	General	Specific details can be difficult to ascertain. financial plans depend on reliability of funding. Banks are hesitant to commit funds given the recent history of the programs reliability; therefore more creative and expensive alternatives may be necessary to fund. Environmental impacts can also be difficult to anticipate until a full review under CEQA and the agencies occurs.	Comment noted.
78	General	5-Year Plan. To ensure a complete set of data and plans for each agency (and to keep costs down), provide a distribution form that must be filled in <i>completely</i> to meet the requirements. I have observed that "self reporting" of levee deficiencies and performance history is seldom complete or adequate.	It is important for a Local Agency to indicate what the problems and deficiencies are. Once those have been addressed, other deficiencies can be identified and corrected.
79	Editing	Include a Table of Contents for facilitated navigation through the document.	The Guidelines have been modified to address this comment.

DWR Response to Comments

	Category	Comment	Response
80	General	<p>"• A quantitative assessment of the current and future level of flood protection provided by the levee system assuming the Five Year Plan is not implemented;</p> <p>• A quantitative assessment of the current and future level of flood protection provided by the levee system assuming the Five-Year Plan is implemented;</p> <p>• An inventory, valuation, and flood damage assessment of assessable structures and other property within the Applicant's service area."</p> <p>A review of Exhibit A demonstrates that the above listed information is not required to be included in the Five Year Plan. Exhibit A should be revised to specifically describe that information which will be required for preparation of the Local Agency Benefit Assessment. Furthermore, a sample quantitative assessment which the Department finds acceptable should be included in Exhibit B for District reference. Including the aforementioned revisions to Exhibits A and B will focus District staff time and resources on the essential aspects of the Five Year Plan and will increase Plan uniformity across Districts, facilitating Department assessment of the overall situation in the Delta and the most appropriate allocation of funding.</p>	See response in Row 5.
81	Habitat	<p>The Department has also revised its habitat policy by encouraging "habitat bank" projects. Previously, all impacts were mitigated on a project-specific basis, as conventionally occurs in response to environmental review under CEQA. While CEQA does not preclude the mitigation approach described in the Guidelines, neither does it provide guidance for regulatory agencies such as the Department, Department of Fish and Game (DFG), US Fish and Wildlife Service, National Marine Fisheries, US Army Corps of Engineers etc. which may have jurisdiction. Accordingly habitat project requirements included in the Guidelines should include the governing regulatory framework agreed upon by DFG and Department for implementation of "habitat bank" projects could result in a situation whereby the Department realizes "stranded investments" and Districts contribute funds to a project which ultimately does not provide mitigation credits for flood control projects.</p>	<p>Over the past two years, DWR and DFG have developed a process to provide a habitat "banking" option to complement existing options for participating Levee Maintaining Agencies to address the "no net long term loss of habitat" requirement of the Program. Habitat banking projects will be subject to specific guidance being finalized by DFG and DWR. When complete, those guidance documents will be publicly available and Local Agencies will have the opportunity to participate in the development of a pilot program.</p>

DWR Response to Comments

	Category	Comment	Response
82	General	The Guidelines introduce requirements for more detailed and specific information to accompany application submittals, including completion of a Five Year Plan and Local Agency Benefit Assessment and associated Estimation of Flood Damage Reduction Benefits. Department staff has clarified that preparing or amending the Five Year Plan and Local Agency Benefit Assessment pursuant to the Guidelines is eligible for reimbursement under a Project Funding Agreement. However, preparation of application materials is not eligible for reimbursement, regardless of whether or not the project is funded under the Program. Accordingly, the Guidelines require Districts wishing to participate in the Program to dedicate increased financial resources to a task which may not result in flood protection benefits to the District.	The Special Projects Program is a competitive grant program. As such, it is in the Local Agencies best interest to prepare thorough and detailed proposals. There are costs applying to the Program that are not reimbursable. However, there is no requirement that the Local Agencies participate in this program.
83	LABA	The Local Agency Benefit Assessment does not provide a mechanism for incorporating the value of statewide benefits which are provided by the levee system. The Guidelines indicate that Districts should include only assets belonging to property owners subject to assessment when estimating avoided physical damage, avoided loss-of function costs and avoided emergency response costs. The approach does not allow the Districts to consider statewide benefits such as water quality, interstate commerce, protection of infrastructure and protection of rural population centers when calculating the cost benefit provided by the levee system.	The State cost share is based on the project benefits less the local benefits. This methodology accounts for the non-local benefits project will offer.
84	Cost-Share	It appears that the intent of the Guidelines is to limit the amount of money the Department will spend on non-construction costs over a certain percentage of the overall project costs. However, on page 9, the Guidelines state that the Department will only pay its State share of non-construction costs up to 30% of the total project cost. On page 23, the Guidelines state that the Department will not pay its State share of non-construction costs over 20% of the overall project costs. The amount the Department intends to reimburse of non-construction costs should be clarified.	The Guidelines have been modified to address this comment in Section VII, Eligible Costs, and Section XV, Cost Share Formula.
85	General	The example of the Alternative State Cost Share provided in paragraph 3 of Exhibit B appears to offer a disincentive to have a project that has equal flood damage benefits and present value costs. This example should be revised to provide additional clarity.	Exhibit C, Local Agency Benefits Assessment (formerly Exhibit B), of the Guidelines has been modified to address this comment.

DWR Response to Comments

	Category	Comment	Response
86	Cost-Share	The Local Agency Benefit Assessment does not provide a mechanism for incorporating the value of statewide benefits which are provided by the levee system. The guidelines indicate that districts should include only assets belonging to property owners subject to assessment when estimating avoided physical damage, loss-of function costs, and avoided emergency response costs. This does not allow districts to consider statewide benefits such as water quality, interstate commerce, protection of infrastructure, and protection of rural population centers.	See the response in row 83.
87	Funding	The guidelines introduce requirements for more detailed information to accompany application submittals, but preparation of application materials is not eligible for reimbursement. Therefore, the guidelines require districts wishing to participate to dedicate financial resources to a task which may not result in flood protection benefits.	See the response in row 82.
88	Habitat	The revised habitat policy encourages "habitat bank" projects. Previously, impacts were mitigated on a project-specific basis, as conventionally occurs in response to a CEQA review. CEQA doesn't provide guidance for the agencies that may have jurisdiction. Habitat project requirements should include the governing regulatory framework agreed upon by DFG and DWR for implementation of "habitat bank" projects, otherwise they could result in a situation in which the Department realizes "stranded investments".	Over the past two years, DWR and DFG have developed a process to provide a habitat "banking" option to complement existing options for participating Levee Maintaining Agencies to address the "no net long term loss of habitat" requirement of the Program. Habitat banking projects will be subject to specific guidance being finalized by DFG and DWR. When complete, those guidance documents will be publicly available and Local Agencies will have the opportunity to participate in the development of a pilot program.
89	Habitat	Reduced state cost share will result in an increase in financial burden for the districts awarded program funding. This is occurring simultaneously with a 25% reduction in subvention funding. This will significantly reduce the number and extent of levee maintenance projects districts will be able to undertake, which will impede the ultimate goal of maintaining levee integrity throughout the delta.	The 25% reduction of the State funding is a Legislative consequence of the Subventions Program sunset. The Special Projects Program has the potential to provide a 95% State cost-share; a significant increase in funding. The Department relies on the Local Agencies to understand the programs that are available to them and manage their participation to achieve the best outcome.